



# OLR RESEARCH REPORT

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## **OLR BACKGROUNDER: SOLICITATION OF CHARITABLE FUNDS ACT**

By: Katherine Dwyer, Legislative Analyst II

This report describes Connecticut's Solicitation of Charitable Funds Act.

### **SUMMARY**

The Solicitation of Charitable Funds Act ([CGS § 21a-175 et seq.](#)) regulates organizations, activities, and professions related to charitable donations. It requires charitable organizations (charities) to register annually with Connecticut Department of Consumer Protection (DCP) in order to solicit donations or have others solicit on their behalf. A charity must also provide financial reports to DCP as part of the registration application. Certain charitable organizations are exempt from the registration and financial record requirements.

The law also prohibits individuals and charities from certain acts related to charities. It allows DCP to conduct an investigation to determine if anyone has violated or is about to violate this law. The DCP commissioner has the subpoena power, as well as the power to administer an oath or affirmation and conduct investigatory hearings. He may also deny, suspend, or revoke a charity's, fund-raising counsel's, or paid solicitor's registration for violating any of the law's provisions.

In addition, the law sets requirements for certain related professions, such as fund-raising counsel, paid solicitors, and commercial coventurers.

## **CHARITY REGISTRATION**

### ***Requirements***

Charities must register annually with DCP to conduct solicitation or have others solicit on their behalf. The applicant must submit to DCP (1) a registration statement, (2) a \$50 registration fee, (3) an annual financial report for the preceding fiscal year, and (4) an audited financial statement. A registered parent organization may file a consolidated annual registration for itself and its chapters, branches, or affiliates. By doing so, the chapters, branches, or affiliates do not have to submit separate registration applications. Each charity must renew its registration no more than five months after the charity's fiscal year ends.

If DCP determines that the registration application is incomplete or does not comply with DCP regulations, it must notify the charity within 10 days of receiving the application. If the charity is not notified of noncompliance within that timeframe, the application is approved.

Any charity may request a hearing on its status within seven days of receiving noncompliance notice. DCP must hold a hearing within seven days of receiving the request and render a decision within three days of the hearing.

The charity must pay a \$25 late fee for each month, or part thereof, that the application is late unless the DCP commissioner granted the charity an extension. The commissioner may waive or reduce the late fee upon written request and for good cause, or extend the charity's financial report filing deadline for up to six months from the report's original due date for good cause.

A charity that fails to register must include in its application an annual financial report for each of the previous years in which it was required to either register or file an annual financial report ([CGS § 21a-190b](#)).

### ***Financial Reports***

Every charity required to register with DCP must annually file a financial report for its most recent fiscal year as part of the registration application. The report must include a financial statement and any other information the DCP commissioner requires. The report must be available to the public.

A charity with gross revenue over \$500,000 in the year covered by the report must include a certified public accountant's audit report. (Gross revenue does not include grants or fees from government agencies or revenue from funds in a trust for the charity's benefit.) The commissioner may, upon written request and for good cause, waive the audit report requirement ([CGS § 21a-190c](#)).

### ***Exempt Organizations***

The law exempts from the registration and financial disclosure requirements any:

1. organized religious corporation, institution, or society;
2. parent-teacher association or educational institution either accredited or with state or nationally approved curricula;
3. nonprofit licensed hospital;
4. state or United States governmental unit or instrumentality;
5. person who solicits solely for the benefit of organizations described above; and
6. charity which normally receives less than \$50,000 in contributions annually, provided it does not compensate anyone primarily to solicit (such a charity must still keep fiscal records available for DCP inspection upon request) ([CGS § 21a-190d](#)).

### **PROHIBITED ACTS**

The law prohibits individuals and charities from performing certain acts related to charities.

#### ***Individual***

It is against the law for any person to:

1. misrepresent (a) a solicitation's purpose or beneficiary, (b) a charity's purpose or nature, or (c) that any other person sponsors or endorses a solicitation;
2. use or exploit the registration to make the public believe that the registration is a state endorsement or approval;

3. use the charity's name or display its emblem, device, or printed matter without its express written permission;
4. make any false or misleading statement on any document required by this law;
5. fail to comply with this law's requirements; or
6. appropriate a charity's property for private use.

It is also unlawful for any person conducting a charity's affairs to engage in any financial transaction unrelated to accomplishing its charitable purpose ([CGS § 21a-190h](#)).

### ***Charity***

It is unlawful for any charity to:

1. engage in any financial transaction unrelated to accomplishing its charitable purpose;
2. expend an unreasonable amount of money for solicitation or management;
3. use the name which is the same as or confusingly similar to another charity's name unless the latter charity provides written consent to do so;
4. represent itself as being associated with another charity without its express written acknowledgement and endorsement; or
5. use an unregistered fund-raising counsel's or paid solicitor's services.

It is also unlawful for a fund-raising counsel or paid solicitor to perform services for an unregistered charity ([CGS § 21a-190h](#)).

## **DCP AUTHORITY**

### ***Investigations, Subpoenas, And Court Orders***

DCP can conduct an investigation to determine if anyone has violated or is about to violate this law. The DCP commissioner or his authorized representative may (1) subpoena documents relating to an investigation, (2) issue subpoenas to anyone involved in or who has knowledge relevant to the investigation, (3) administer an oath or affirmation to anyone, and (4) conduct investigation hearings. The commissioner can also adopt regulations to carry out the law's provisions.

If anyone fails to obey a subpoena issued by the commissioner or his authorized representative, the commissioner may apply to Hartford Superior Court which, after a hearing, may order (1) the person to obey the subpoena and (2) any appropriate additional relief. Anyone who disobeys such an order may be punished for contempt of court ([CGS § 21a-190i](#)).

### ***Registration Denial, Suspension, And Revocation***

The commissioner may deny, suspend, or revoke a charity's, fund-raising counsel's, or paid solicitor's registration for violating any of the law's provisions. He may accept a written compliance assurance when he determines that a violation of the law is not material and that the public interest would not be served by denying, suspending, or revoking the registration.

The attorney general, at the commissioner's request, may apply to the Superior Court for:

1. a temporary or permanent injunction to restrain violations of this law,
2. a receiver's appointment,
3. an order of restitution, and
4. an accounting or other appropriate relief to ensure the due application of charitable funds.

Anyone who knowingly violates this law can be fined up to \$5,000 or imprisoned up to one year, or both.

If the court determines that a person willfully engaged in an action prohibited by this law, the Attorney General may recover, on the state's behalf, a \$2,500 maximum penalty for each violation ([CGS § 21a-190l](#)).

## **REGULATED PROFESSIONS**

### ***Fund-Raising Counsel***

The law defines “fund-raising counsel” as a person who professionally plans, manages, advises or consults with respect to a Connecticut charity's contribution solicitation. The fund-raising counsel does not (1) solicit contributions or (2) directly or indirectly employ, procure, or engage anyone compensated to solicit contributions ([CGS § 21a-190a\(6\)](#)).

**Registration.** A fund-raising counsel who at any time has custody or control of contributions from a solicitation must annually register with DCP and pay a \$120 registration fee. The applicant must also file a \$20,000 bond with DCP when he or she applies to register. The counsel must be the bond's principal obligor, and he or she must maintain the bond as long as the registration is in effect. The bond must run to the state and any person who may have a cause of action against the counsel for any liabilities resulting from the counsel's solicitation activities or violation of this law ([CGS § 21a-190e\(b\)](#)).

**Contract Requirements.** Each contract between a fund-raising counsel and a charity must be in writing. The counsel must file the contract with DCP at least 15 days before performing services for the charity. The contract must describe the services the counsel will provide and how he or she will be compensated.

The counsel must account to the charity all income received and expenses paid within 90 days after completing a solicitation campaign or, if the campaign lasts more than one year, on the anniversary of the campaign's commencement. The accounting must be in writing. The charity must retain it for three years and have it available to DCP upon request ([CGS 21a-190e\(b\)](#)).

### ***Paid Solicitors***

The law defines a “paid solicitor” as a person who is paid to (1) solicit contributions or (2) employ, procure or engage other people to solicit contributions for compensation. A charity's bona fide nontemporary salaried officer or employee does not qualify as a paid solicitor ([CGS § 21a-190a\(7\)](#)).

**Registration.** No one can act as a paid solicitor without first registering with DCP. In addition to the DCP registration form, the solicitor must pay a \$500 registration fee and renew his or her registration annually.

Each registration or registration renewal applicant must file a \$20,000 bond with DCP, for which the applicant is the principal obligor. The bond must have one or more responsible sureties whose aggregate liability is at least \$20,000. Each solicitor must maintain such a bond as long as he or she is registered. The bond must run to the state and to anyone who may have a cause of action against the solicitor for any liabilities resulting from his or her conduct or violation of this law or related regulations ([CGS § 21a-190f\(a\), \(b\)](#)).

**Contract Requirements.** A contract between a paid solicitor and a charity must:

1. be in writing,
2. clearly state the respective obligations of the solicitor and the charity, and
3. state the minimum amount (as a percentage of the gross revenue) that the charity must receive as a result of the solicitation campaign. The minimum amount must not include any amount the charity will pay as campaign expenses ([CGS § 21a-190f\(d\)](#)).

The paid solicitor must file a copy of the contract and a solicitation notice with DCP at least 20 days before beginning the solicitation campaign. The solicitor must certify the notice as true to the best of his or her knowledge and it must include:

1. a description of the solicitation event or campaign;
2. the location and telephone number where the event or campaign will be conducted;
3. names and addresses of all employees, agents, and anyone who will solicit during the event or campaign; and
4. the account number and location of all bank accounts where campaign receipts will be deposited.

The solicitor must also submit copies of campaign solicitation literature to DCP. The involved charity must certify that the solicitation notice and accompanying material are true and complete.

Before a solicitation campaign begins, the commissioner must post information on the DCP website about the terms of the contract between the solicitor and the charity, the campaign dates, and the raised fund percentage that the solicitor will retain ([CGS § 21a-190f\(c\)](#)).

***Disclosures and Representations.*** A paid solicitor must, prior to orally requesting a contribution, and at the same time he or she makes a written request for a contribution, clearly and conspicuously disclose:

1. his or her name as on file with DCP;
2. that he or she is a paid solicitor; and
3. the gross revenue percentage that the charity will receive from the donation ([CGS § 21a-190f\(e\)](#)).

Additionally, a paid solicitor orally conducting a solicitation campaign must send a written confirmation to each person who pledges to contribute within five days of the solicitation. The confirmation must clearly and conspicuously include the disclosure information above.

A paid solicitor cannot represent that any part of a contribution will be given or donated to a charity unless the charity, prior to the solicitation, provided written consent to use its name. The written consent must be signed by two of the charity's authorized officers, directors, or trustees.

A paid solicitor also cannot represent that tickets to an event are to be donated for use by another, unless the solicitor first obtains a written commitment from the charity stating that it will accept donated tickets and specifying how many donated tickets it is willing to accept. The solicitor cannot solicit more contributions for donated tickets than the charity has committed to accept.

A paid solicitor must require anyone he or she directly or indirectly employs, procures, or engages to solicit to comply with all of the requirements above ([CGS § 21a-190f\(f\)-\(i\)](#)).



**Reporting Requirements.** A paid solicitor must file a campaign financial report with DCP within 90 days after a solicitation campaign is complete, and on the anniversary of the commencement of a campaign that lasts more than one year. The report must include gross revenue and an itemization of all incurred expenditures. One of the paid solicitor's authorized officials and two of the charity's authorized officials must certify that the report is true and complete to the best of their knowledge. The report must be available to the public.

A paid solicitor must maintain during each solicitation campaign and for at least three years after the campaign's completion the following records, which must be available for DCP inspection upon request:

1. each contributor's name and address, as well as the contribution date and amount, provided DCP cannot disclose this information unless necessary for investigative or law enforcement purposes;
2. the name and address of each employee, agent, or person involved with the campaign; and
3. records of all income received and expenses incurred in the course of the campaign ([CGS § 21a-190f\(k\)](#)).

If a paid solicitor sells tickets to an event and represents that they will be donated for use by another, he or she must maintain the following records for at least three years after the event:

1. each ticket contributor's name, address, and number of tickets donated; and
2. the name and address of all charities receiving donated tickets for use by others, including the number of tickets each charity received ([CGS § 21a-190f\(l\)](#)).

The paid solicitor must deposit all collected funds in a bank account in the charity's name. The charity must have sole or joint control of the account.

The paid solicitor must report any material information change filed with DCP seven days or less after the change occurs.

A person may not act as a paid solicitor if the person, his or her officer or director, anyone the person employs, engages, or procures to solicit for compensation, or anyone with a controlling interest has been convicted of a felony or a misdemeanor involving dishonesty or related to a solicitation for a charitable organization or purpose ([CGS § 21a-190f\(m-o\)](#)).

### **Commercial Coventurers**

The law defines a “commercial coventurer” as a person who (1) engages in trade or commerce in Connecticut for profit other than in connection with fund raising for charitable organizations or purposes and (2) conducts a charitable sales promotion ([CGS § 21a-190a\(8\)](#)). A commercial coventurer must sign a written agreement with a charity before conducting a charitable sales promotion on the charity’s behalf.

**Written Agreements.** Every charity that agrees to permit a commercial coventurer to conduct a charitable sales promotion on its behalf must obtain a written agreement from the coventurer and submit a copy to DCP at least 10 days before the promotion. The charity’s authorized representative and the commercial coventurer must sign the agreement, which must include the following:

1. the goods or services to be offered to the public,
2. the area where and the starting and final date when the promotion will take place,
3. the manner in which the charity’s name is to be used,
4. a provision requiring the coventurer to give a final accounting on a per unit basis to the charity and specifying the date this must happen, and
5. the date when and the manner in which the benefit is to be conferred on the charity ([CGS § 21a-190g\(a\)](#)).

**Records and Disclosure Requirements.** A commercial coventurer must keep the final accounting for each charitable sales promotion for three years after the final accounting date and the accounting must be available to DCP upon request. He or she must also disclose in each promotion advertisement the amount per unit of goods or services purchased or used that is to benefit the charitable organization or purpose ([CGS § 21a-190g\(b\), \(c\)](#)).

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